

99TH CONGRESS
1ST SESSION

S. 1673

To amend the False Claims Act to strengthen the Government's enforcement.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20 (legislative day, SEPTEMBER 16), 1985

Mr. THURMOND (for himself, Mr. BIDEN, Mr. EAST, Mr. HATCH, Mr. LAXALT, and Mr. MCCONNELL) (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the False Claims Act to strengthen the Government's enforcement.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "False Claims Act Amend-
4 ments of 1985".

5 SEC. 2. Section 3729 of title 31, United States Code, is
6 amended by—

7 (1) inserting "(a)" immediately before "A
8 person";

9 (2) striking out "\$2,000" and inserting in lieu
10 thereof "\$5,000";

1 (3) striking out “not a member of the armed
2 forces of the United States” the first place it appears;

3 (4) inserting “including consequential damages as
4 defined in subsection (b)” after “an amount equal to 2
5 times the amount of damages”;

6 (5) strike out “or” at the end of clause (5);

7 (6) strike out the period in clause (6) and insert in
8 lieu thereof “; or”; and

9 (7) inserting at the end thereof the following:

10 “(7) knowingly makes, uses, or causes to be made
11 or used, a false record or statement to conceal, avoid,
12 or decrease an obligation to pay or transmit money or
13 property to the Government.

14 “(b)(1) Consequential damages as used in subsection (a)
15 shall include damages which the United States would not
16 have sustained but for—

17 “(A) the doing or commission of any of the acts
18 prohibited by subsection (a); or

19 “(B) having entered into or made any contract or
20 grant as a result of any material part of any false
21 statement.

22 “(2) Any credits to which the defendant establishes enti-
23 tlement may be deducted from the amount payable under
24 subsection (a) only after the damages sustained by the United
25 States have been doubled as set forth in such subsection.

1 “(3) If any portion of the damages sustained by the
2 United States under paragraph (1) is considered reasonably
3 unforeseeable by the court, the court may reduce by not more
4 than 25 percent the total amount of damages payable under
5 such paragraph.

6 “(c) For purposes of this section, the terms ‘knowing’
7 and ‘knowingly’ mean the defendant—

8 “(1) had actual knowledge; or

9 “(2) had constructive knowledge in that the de-
10 fendant had reason to know that the claim or state-
11 ment was false or fictitious;

12 and no proof of intent to defraud or proof of any other ele-
13 ment of a claim for fraud at common law is required.

14 “(d) For purposes of this section, ‘claim’ includes any
15 request or demand whether under a contract or otherwise for
16 money or property which is made to a contractor, grantee, or
17 other recipient if the Government provides any portion of the
18 money or property which is requested or demanded or if the
19 Government will reimburse such contractor, grantee, or other
20 recipient for any portion of the money or property which is
21 requested or demanded.

22 “(e)(1) The Attorney General or his designee may apply
23 for provisional relief to any district court having jurisdiction
24 pursuant to section 3732 whenever he has reasonable cause
25 to believe this section or section 3730, or 3731 may have

1 been violated. If the court finds there is a reasonable likeli-
2 hood that the United States will prevail after trial on the
3 merits of its claims, the court shall enjoin the defendant from
4 taking any action which the court, in the exercise of its dis-
5 cretion, finds reasonably likely to hinder or delay the United
6 States in the collection of any judgment which may be ob-
7 tained in such action.

8 “(2) In addition, the court may from time to time make
9 such other orders as it deems appropriate, including requiring
10 the defendant to post security for judgment, to seek the prior
11 approval of the court before making any transfer without an
12 adequate and full consideration, paying an antecedent debt
13 which has matured more than thirty days prior to the date of
14 payment, or otherwise engaging in any transaction not in the
15 usual and regular course of the defendant’s business. Except
16 as provided in this section, such application and proceedings
17 by the Attorney General shall be governed by Rule 65 of the
18 Federal Rules of Civil Procedure.”.

19 SEC. 3. Section 3730 of title 31, United States Code, is
20 amended by—

21 (1) striking out “\$2,000” in subsection (a) and in-
22 serting in lieu thereof “\$5,000”; and

23 (2) striking out “The district courts of the United
24 States have jurisdiction of the action. Trial is in the ju-
25 dicial district within whose jurisdictional limits the

1 person charged with a violation is found or the viola-
2 tion occurs.” in subsection (b)(1).

3 SEC. 4. Section 3731 of title 31, United States Code, is
4 amended by—

5 (1) inserting before the period at the end of sub-
6 section (b) the following: “or within three years from
7 the date when facts material to the right of action are
8 known or reasonably should have been known by the
9 official within the Department of Justice charged with
10 responsibility to act in the circumstances, whichever
11 occurs last”; and

12 (2) inserting after subsection (b), the following
13 new subsections:

14 “(c) In any action brought under this section or section
15 3729, 3730, 3732, or 3733, the United States shall be re-
16 quired to prove all essential elements of the cause of action,
17 including damages, by a preponderance of the evidence.

18 “(d) Notwithstanding any contrary provision of law, the
19 Federal Rules of Criminal Procedure, or the Federal Rules of
20 Evidence, a final judgment rendered in favor of the United
21 States in any criminal proceeding charging fraud or false
22 statements, whether upon a verdict after trial or upon a plea
23 of guilty or nolo contendere, shall estop the defendant from
24 denying the essential elements of the offense in any action

1 brought by the United States pursuant to this section or sec-
2 tion 3729, 3730, 3732, or 3733.”.

3 SEC. 5. (a) Subchapter III of chapter 37 of title 31,
4 United States Code, is amended by adding at the end thereof
5 the following:

6 **“§ 3732. False claims jurisdiction**

7 “(a) The district courts of the United States and for
8 Puerto Rico, the Virgin Islands, Guam, and any territory or
9 possession of the United States shall have jurisdiction over
10 any action commenced by the United States under this sec-
11 tion, or under section 3729, 3730, 3731, or 3733 and venue
12 of any such action shall be proper in any district in which any
13 defendant, or in the case of multiple defendants, any one de-
14 fendant can be found, resides, transacts business, or in which
15 any act prescribed by such sections is alleged by the United
16 States to have occurred. A summons as required by the Fed-
17 eral Rules of Civil Procedure shall be issued by the district
18 court and served at any place within the United States,
19 Puerto Rico, the Virgin Islands, Guam, any territory or pos-
20 session of the United States, or in any foreign country.

21 “(b) The United States Court of Claims shall also have
22 jurisdiction of any such action if the action is asserted by way
23 of counterclaim by the United States. The United States may
24 join as additional parties in such counterclaim all persons
25 who may be jointly and severally liable with such party

1 against whom a counterclaim is asserted by reason of having
2 violated this section, or section 3729, 3730, 3731, or 3733,
3 except that no cross-claims or third-party claims shall be as-
4 serted among such additional parties unless such claims are
5 otherwise within the jurisdiction of the United States Court
6 of Claims.

7 **“§ 3733. Civil investigative demands**

8 “(a) For purposes of this section, the term—

9 “(1) ‘False Claims Act law’ means—

10 “(A) this section and sections 3729 through
11 3731 of this title, 96 Stat. 978–979, commonly
12 known as the False Claims Act; and

13 “(B) any Act of Congress enacted after this
14 section which prohibits, or makes available to the
15 United States in any court of the United States
16 any civil remedy with respect to any false claim,
17 bribery, or corruption of any officer or employee
18 of the United States;

19 “(2) ‘False Claims Act investigation’ means any
20 inquiry conducted by any False Claims Act investiga-
21 tor for the purpose of ascertaining whether any person
22 is or has been engaged in any violation of a False
23 Claims Act law;

24 “(3) ‘False Claims Act investigator’ means any
25 attorney or investigator employed by the Department

1 of Justice who is charged with the duty of enforcing or
2 carrying into effect any False Claims Act law or any
3 officer or employee of the United States acting under
4 direction and supervision of such attorney or investiga-
5 tor in connection with a False Claims Act investiga-
6 tion;

7 “(4) ‘person’ means any natural person, partner-
8 ship, corporation, association, or other legal entity, in-
9 cluding any State or political subdivision;

10 “(5) ‘documentary material’ includes the original
11 or any copy of any book, record, report, memorandum,
12 paper, communication, tabulation, chart, or other docu-
13 ment, or data compilations stored in or accessible
14 through computer or other information retrieval sys-
15 tems, together with instructions and all other materials
16 necessary to use or interpret such data compilations,
17 and any product or discovery;

18 “(6) ‘custodian’ means the custodian, or any
19 deputy custodian, designated by the Attorney General;
20 and

21 “(7) ‘product of discovery’ includes without limita-
22 tion the original or duplicate of any deposition, inter-
23 rogatory, document, thing, result of the inspection of
24 land or other property, examination, or admission ob-
25 tained by any method of discovery in any judicial liti-

1 gation or administrative litigation of an adversarial
2 nature; any digest, analysis, selection, compilation, or
3 any derivation thereof; and any index or manner of
4 access thereto.

5 “(b)(1) Whenever the Attorney General, the Deputy At-
6 torney General, or an Assistant Attorney General has reason
7 to believe that any person may be in possession, custody, or
8 control of any documentary material, or may have any infor-
9 mation relevant to a False Claims Act investigation, he may,
10 prior to the institution of a civil proceeding, issue in writing
11 and cause to be served upon such person, a civil investigative
12 demand requiring such person to produce such documentary
13 material for inspection and copying, to answer in writing
14 written interrogatories, to give oral testimony concerning
15 documentary material or information, or to furnish any com-
16 bination of such material, answers, or testimony. Whenever a
17 civil investigative demand is an express demand for any prod-
18 uct of discovery, the Attorney General, the Deputy Attorney
19 General, or an Assistant Attorney General shall cause to be
20 served, in any manner authorized by this section, a copy of
21 such demand upon the person from whom the discovery was
22 obtained and notify the person to whom such demand is
23 issued of the date on which such copy was served.

24 “(2)(A) Each such demand shall state the nature of the
25 conduct constituting the alleged violation of a False Claims

1 Act law which is under investigation, and the applicable pro-
2 vision of law.

3 “(B) If such demand is for production of documentary
4 material, the demand shall—

5 “(i) describe each class of documentary material
6 to be produced with such definiteness and certainty as
7 to permit such material to be fairly identified;

8 “(ii) prescribe a return date for each such class
9 which will provide a reasonable period of time within
10 which the material so demanded may be assembled and
11 made available for inspection, and copying; and

12 “(iii) identify the False Claims Act investigator to
13 whom such material shall be made available.

14 “(C) If such demand is for answers to written interroga-
15 tories, the demand shall—

16 “(i) set forth with definiteness and certainty the
17 written interrogatories to be answered;

18 “(ii) prescribe dates at which time answers to
19 written interrogatories shall be submitted; and

20 “(iii) identify the False Claims Act investigator to
21 whom such answers shall be submitted.

22 “(D) If such demand is for the giving of oral testimony,
23 the demand shall—

24 “(i) prescribe a date, time, and place at which
25 oral testimony shall be commenced; and

1 “(ii) identify a False Claims Act investigator who
2 shall conduct the examination and the custodian to
3 whom the transcript of such examination shall be sub-
4 mitted.

5 Any such demand which is an express demand for any prod-
6 uct of discovery shall not be returned or returnable until
7 twenty days after a copy of such demand has been served
8 upon the person from whom the discovery was obtained.

9 “(C)(1) No such demand shall require the production of
10 any documentary material, the submission of any answers to
11 written interrogatories, or the giving of any oral testimony if
12 such material, answers, or testimony would be protected from
13 disclosure under—

14 “(A) the standards applicable to subpoenas or sub-
15 poenas duces tecum issued by a court of the United
16 States to aid in a grand jury investigation; or

17 “(B) the standards applicable to discovery re-
18 quests under the Federal Rules of Civil Procedure, to
19 the extent that the application of such standards to any
20 such demand is appropriate and consistent with the
21 provisions and purposes of this section and sections
22 3729 through 3731.

23 “(2) Any such demand which is an express demand for
24 any product of discovery supersedes any inconsistent order,
25 rule, or provision of law (other than this section) preventing

1 or restraining disclosure of such product of discovery to any
2 person. Disclosure of any product of discovery pursuant to
3 any such express demand does not constitute a waiver of any
4 right or privilege which may be invoked to resist discovery of
5 trial preparation materials to which the person making such
6 disclosure may be entitled.

7 “(d)(1) Any such demand may be served by any False
8 Claims Act investigator, or by any United States Marshal or
9 Deputy Marshal, at any place within the United States.

10 “(2) Any such demand or any petition filed under sub-
11 section (k) may be served upon any person who is not found
12 within the United States, in such manner as the Federal
13 Rules of Civil Procedures prescribe for service in a foreign
14 country. To the extent that the courts of the United States
15 can assert jurisdiction over such person consistent with due
16 process, the United States District Court for the District of
17 Columbia shall have the same jurisdiction to take any action
18 respecting compliance with this section by such person that
19 such court would have if such person were personally within
20 the jurisdiction of such court.

21 “(e)(1) Service of any such demand or of any petition
22 filed under subsection (k) may be made upon a partnership,
23 corporation, association, or other legal entity by—

24 “(A) delivering an executed copy thereof to any
25 partner, executive officer, managing agent, or general

1 agent thereof, or to any agent thereof authorized by
2 appointment or by law to receive service of process on
3 behalf of such partnership, corporation, association, or
4 entity;

5 “(B) delivering an executed copy thereof to the
6 principal office or place of business of the partnership,
7 corporation, or entity to be served; or

8 “(C) depositing such copy in the United States
9 mails, by registered or certified mail, return receipt re-
10 quested, addressed to such partnership, corporation, as-
11 sociation, or entity at its principal office or place of
12 business.

13 “(2) Service of any such demand or of any petition filed
14 under subsection (k) may be made upon any natural person
15 by—

16 “(A) delivering an executed copy thereof to the
17 person to be served; or

18 “(B) depositing such copy in the United States
19 mails by registered or certified mail, return receipt re-
20 quested, addressed to such person at his residence or
21 principal office or place of business.

22 “(f) A verified return by the individual serving any such
23 demand or petition setting forth the manner of such service
24 shall be proof of such service. In the case of service by regis-

1 tered or certified mail, such return shall be accompanied by
2 the return post office receipt of delivery of such demand.

3 “(g) The production of documentary material in re-
4 sponse to a demand served pursuant to this section shall be
5 made under a sworn certificate, in such form as the demand
6 designates, by the person, of a natural person, to whom the
7 demand is directed or, if not a natural person, by a person
8 having knowledge of the facts and circumstances relating to
9 such production and authorized to act on behalf of such
10 person. The certificate shall state that all of the documentary
11 material required by the demand and in the possession, custo-
12 dy, or control of the person to whom the demand is directed
13 has been produced and made available to the custodian.

14 “(h) Each interrogatory in a demand served pursuant to
15 this section shall be answered separately and fully in writing
16 under oath unless it is objected to, in which event the reasons
17 for the objection shall be stated in lieu of any answer, and it
18 shall be submitted under a sworn certificate, in such form as
19 the demand designates, by the person, if a natural person, to
20 whom the demand is directed or, if not a natural person, by a
21 person or persons responsible for answering each interrogato-
22 ry. The certificate shall state that all information required by
23 the demand and in the possession, custody, control, or knowl-
24 edge of the person to whom the demand is directed has been
25 submitted. To the extent that any materials are not fur-

1 nished, they shall be identified and reasons set forth with
2 particularity for each.

3 “(i)(1) The examination of any person pursuant to a
4 demand for oral testimony served under this section shall be
5 taken before an officer authorized to administer oaths and
6 affirmations by the laws of the United States or of the place
7 where the examination is held. The officer before whom the
8 testimony is to be taken shall put the witness on oath or
9 affirmation and shall personally, or by someone acting under
10 his direction and in his presence, record the testimony of the
11 witness. The testimony shall be taken stenographically and
12 transcribed. When the testimony is fully transcribed, the offi-
13 cer before whom the testimony is taken shall promptly trans-
14 mit a copy of the transcript of the testimony to the custodian.
15 This subsection shall not preclude the taking of testimony by
16 any means authorized by, and in a manner consistent with,
17 the Federal Rules of Civil Procedure.

18 “(2) The False Claims Act investigator conducting the
19 examination shall exclude from the place where the examina-
20 tion is held all other persons except the person being exam-
21 ined, his counsel, the officer before whom the testimony is to
22 be taken, and any other stenographer taking such testimony.

23 “(3) The oral testimony of any person taken pursuant to
24 a demand served under this section shall be taken in the judi-
25 cial district of the United States within which such person

1 resides, is found, or transacts business, or in such other place
2 as may be agreed upon by the False Claims Act investigator
3 conducting the examination and such person.

4 “(4) When the testimony is fully transcribed, the False
5 Claims Act investigator or the officer shall afford the witness,
6 who may be accompanied by counsel, a reasonable opportuni-
7 ty to examine the transcript and the transcript shall be read
8 to or by the witness, unless such examination and reading are
9 waived by the witness. Any changes in form or substance
10 which the witness desires to make shall be entered and iden-
11 tified upon the transcript by the officer or the False Claims
12 Act investigator with a statement of the reasons given by the
13 witness for making such changes. The transcript shall then
14 be signed by the witness, unless the witness in writing
15 waives the signing, is ill, cannot be found, or refuses to sign.
16 If the transcript is not signed by the witness within thirty
17 days after his being afforded a reasonable opportunity to ex-
18 amine it, the officer or the False Claims Act investigator
19 shall sign it and state on the record the fact of the waiver,
20 illness, absence of the witness, or the refusal to sign, together
21 with the reason, if any, given therefor. A refusal to sign or an
22 unreasonable absence shall be deemed to be an acknowledg-
23 ment of its accuracy and an affirmation of its contents.

24 “(5) The officer shall certify on the transcript that the
25 witness was sworn by him and that the transcript is a true

1 record of the testimony given by the witness, and the officer
2 or False Claims Act investigator shall promptly deliver it or
3 send it by registered or certified mail to the custodian.

4 “(6) Upon payment of reasonable charges therefor, the
5 False Claims Act investigator shall furnish a copy of the
6 transcript to the witness only, except that the Attorney Gen-
7 eral, the Deputy Attorney General, or an Assistant Attorney
8 General may, for good cause, limit such witness to inspection
9 of the official transcript of his testimony.

10 “(7)(A) Any person compelled to appear under a
11 demand for oral testimony pursuant to this section may be
12 accompanied, represented, and advised by counsel. Counsel
13 may advise such person, in confidence, with respect to any
14 question asked of such person. Such person or counsel may
15 object on the record to any question, in whole or in part, and
16 shall briefly state for the record the reason for the objection.
17 An objection may be properly made, received, and entered
18 upon the record when it is claimed that such person is enti-
19 tled to refuse to answer the question on grounds of any con-
20 stitutional or other legal right or privilege, including the
21 privilege against self-incrimination. Such person shall not
22 otherwise object to or refuse to answer any question, and
23 shall not by himself or through counsel otherwise interrupt
24 the oral examination. If such person refuses to answer any
25 question, the False Claims Act investigator conducting the

1 examination may petition the district court of the United
2 States pursuant to subsection (k)(1) for an order compelling
3 such person to answer such question.

4 “(B) If such person refuses to answer any question on
5 the grounds of the privilege against self-incrimination, the
6 testimony of such person may be compelled in accordance
7 with the provisions of part V of title 18, United States Code.

8 “(8) Any person appearing for oral examination pursu-
9 ant to a demand served under this section shall be entitled to
10 the same fees and mileage which are paid to witnesses in the
11 district courts of the United States.

12 “(j)(1) The Attorney General, or his authorized designee
13 shall designate a False Claims Act investigator to serve as
14 custodian of documentary material, answers to interrogato-
15 ries, and transcripts of oral testimony received under this sec-
16 tion, and such additional False Claims Act investigators as
17 he shall determine from time to time to be necessary to serve
18 as deputies to such officer.

19 “(2) Any person upon whom any demand under subsec-
20 tion (b)(1) for the production of documentary material has
21 been served shall make such material available for inspection
22 and copying to the False Claims Act investigator designated
23 therein at the principal place of business of such person, or at
24 such other place as such False Claims Act investigator and
25 such person thereafter may agree and prescribe in writing, or

1 as the court may direct pursuant to subsection (k)(1) on the
2 return date specified in such demand, or on such later date as
3 such custodian may prescribe in writing. Such person may,
4 upon written agreement between such person and the custo-
5 dian, substitute copies for originals of all or any part of such
6 material.

7 “(3)(A) The False Claims Act investigator to whom any
8 documentary material, answers to interrogatories, or tran-
9 scriptions of oral testimony are delivered shall take physical pos-
10 session thereof, and shall transmit them to the custodian who
11 shall be responsible for the use made thereof and for the
12 return of documentary material pursuant to this section.

13 “(B) The custodian may cause the preparation of such
14 copies of such documentary material, answers to interrogato-
15 ries, or transcripts of oral testimony as may be required for
16 official use by any authorized official or employee of the De-
17 partment of Justice or any authorized officer or employee of
18 the United States acting under the direction and supervision
19 of an attorney or investigator of the Department of Justice in
20 connection with any False Claims Act investigation, under
21 regulations promulgated by the Attorney General. Notwith-
22 standing subparagraph (C) of this subsection, such material,
23 answers, and transcripts may be used by any such person in
24 connection with the taking of oral testimony pursuant to this
25 section.

1 “(C) Except as otherwise provided in this section, while
2 in the possession of the custodian, no documentary material,
3 answers to interrogatories, or transcripts of oral testimony,
4 or copies thereof, so produced shall be available for examina-
5 tion, without the consent of the person who produced such
6 material, answers, or transcripts, and, in the case of any
7 product of discovery produced pursuant to an express demand
8 for such material, of the person from whom the discovery was
9 obtained, by any individual other than an authorized official
10 or employee of the Department of Justice, or an authorized
11 officer or employee of the United States acting under the
12 direction and supervision of an attorney or investigator of the
13 Department of Justice in connection with any False Claims
14 Act investigation. Nothing in this section is intended to pre-
15 vent disclosure to either body of the Congress or to any au-
16 thorized committee or subcommittee thereof, or to any other
17 agency of the United States for use by such agency in fur-
18 therance of its statutory responsibilities.

19 “(D) While in the possession of the custodian and under
20 such reasonable terms and conditions as the Attorney Gener-
21 al shall prescribe—

22 “(i) documentary material and answers to inter-
23 rogatories shall be available for examination by the
24 person who produced such material or answers, or by
25 an authorized representative of such person; and

1 “(ii) transcripts of oral testimony shall be avail-
2 able for examination by the person who produced such
3 testimony, or his counsel.

4 “(4) Whenever any attorney of the Department of Jus-
5 tice has been designated to appear before any court, grand
6 jury, or Federal administrative or regulatory agency in any
7 case or proceeding, the custodian of any documentary materi-
8 al, answers to interrogatories, or transcripts of oral testimony
9 may deliver to such attorney such material, answers, or tran-
10 scripts for official use in connection with any such case,
11 grand jury, or proceeding as such attorney determines to be
12 required. Upon the completion of any such case, grand jury,
13 or proceeding, such attorney shall return to the custodian any
14 such material, answers, or transcripts so delivered which
15 have not passed into the control of such court, grand jury, or
16 agency through the introduction thereof into the record of
17 such case or proceeding.

18 “(5) If any documentary material has been produced in
19 the course of any False Claims Act investigation by any
20 person pursuant to a demand under this section, and—

21 “(A) any case or proceeding before any court or
22 grand jury arising out of such investigation, or any
23 proceeding before any Federal administrative or regu-
24 latory agency involving such material, has been com-
25 pleted, or

1 “(B) no case or proceeding in which such material
2 may be used has been commenced within a reasonable
3 time after completion of the examination and analysis
4 of all documentary material and other information as-
5 sembled in the course of such investigation,
6 the custodian shall, upon written request of the person who
7 produced such material, return to such person any such mate-
8 rial (other than copies thereof furnished to the custodian pur-
9 suant to paragraph (2) of this subsection or made by the De-
10 partment of Justice pursuant to paragraph (3)(B) of this sub-
11 section) which has not passed into the control of any court,
12 grand jury, or agency through the introduction thereof into
13 the record of such case or proceedings.

14 “(6) In the event of the death, disability, or separation
15 from service in the Department of Justice of the custodian of
16 any documentary material, answers to interrogatories, or
17 transcripts of oral testimony produced under any demand
18 issued pursuant to this section, or of the official relief of such
19 custodian from responsibility for the custody and control of
20 such material, answers or transcripts, the Attorney General
21 or his authorized designee shall promptly (A) designate an-
22 other False Claims Act investigator to serve as custodian of
23 such material, answers, or transcripts, and (B) transmit in
24 writing to the person who produced such material, answers,
25 or testimony notice as to the identity and address of the suc-

1 cessor so designated. Any successor designated under this
2 subsection shall have, with regard to such material, answers
3 or transcripts, all duties and responsibilities imposed by this
4 Act upon his predecessor in office with regard thereto, except
5 that he shall not be held responsible for any default or dere-
6 liction which occurred prior to his designation.

7 “(k)(1) Whenever any person fails to comply with any
8 civil investigative demand served upon him under subsection
9 (b) or whenever satisfactory copying or reproduction of any
10 such material cannot be done and such person refuses to sur-
11 render such material, the Attorney General, through such of-
12 ficers or attorneys as he may designate, may file in the dis-
13 trict court of the United States for any judicial district in
14 which such person resides, is found, or transacts business,
15 and serve upon such person a petition for an order of such
16 court for the enforcement of this section.

17 “(2)(A) Within twenty days after the service of any such
18 demand upon any person, or at any time before the return
19 date specified in the demand, whichever period is shorter, or
20 within such period exceeding twenty days after service or in
21 excess of such return date as may be prescribed in writing,
22 subsequent to service, by any False Claims Act investigator
23 named in the demand, such person may file, in the district
24 court of the United States for the judicial district within
25 which such person resides, is found, or transacts business,

1 and serve upon such False Claims Act investigator a petition
2 for an order of such court, modifying or setting aside such
3 demand. In the case of a petition addressed to an express
4 demand for any product of discovery, a petition to modify or
5 set aside such demand may be brought only in the district
6 court of the United States for the judicial district in which the
7 proceeding in which such discovery was obtained is or was
8 last pending.

9 “(B) The time allowed for compliance with the demand,
10 in whole or in part, as deemed proper and ordered by the
11 court shall not run during the pendency of such petition in
12 the court, except that such person shall comply with any por-
13 tions of the demand not sought to be modified or set aside.
14 Such petition shall specify each ground upon which the peti-
15 tioner relies in seeking such relief, and may be based upon
16 any failure of such demand to comply with the provisions of
17 this section or upon any constitutional or other legal right or
18 privilege of such person.

19 “(3) Within twenty days after the service of any express
20 demand for any product of discovery upon, or at any time
21 before, the return date specified in the demand, whichever
22 period is shorter, or within such period exceeding twenty
23 days after service or in excess of such return date as may be
24 prescribed in writing, subsequent to service, by any False
25 Claims Act investigator named in the demand, the person

1 from whom such discovery was obtained may file, in the dis-
2 trict court of the United States for the judicial district in
3 which the proceeding in which such discovery was obtained is
4 or was last pending, and serve upon any False Claims Act
5 investigator named in the demand and upon the recipient of
6 the demand, a petition for an order of such court modifying or
7 setting aside those portions of the demand requiring produc-
8 tion of any such product of discovery. Such petition shall
9 specify each ground upon which the petitioner relies in seek-
10 ing such relief and may be based upon any failure of such
11 portions of the demand to comply with the provisions of this
12 section, or upon any constitutional or other legal right or
13 privilege of the petitioner. During the pendency of such peti-
14 tion, the court may stay, as it deems proper, compliance with
15 the demand and the running of the time allowed for compli-
16 ance with the demand.

17 “(4) At any time during which any custodian is in custo-
18 dy or control of any documentary material, answers to inter-
19 rogatories delivered, or transcripts of oral testimony given by
20 any person in compliance with any such demand, such
21 person, and in the case of an express demand for any product
22 of discovery, the person from whom such discovery was ob-
23 tained, may file, in the district court of the United States for
24 the judicial district within which the office of such custodian
25 is situated, and serve upon such custodian, a petition for an

1 order of such court requiring the performance by such custo-
 2 dian of any duty imposed upon him by this section.

3 “(5) Whenever any petition is filed in any district court
 4 of the United States under this section, such court shall have
 5 jurisdiction to hear and determine the matter so presented,
 6 and to enter such order or orders as may be required to carry
 7 into effect the provisions of this section. Any final order so
 8 entered shall be subject to appeal pursuant to section 1291 of
 9 title 28, United States Code. Any disobedience of any final
 10 order entered under this section by any court shall be pun-
 11 ished as a contempt thereof.

12 “(6) To the extent that such rules may have application
 13 and are not inconsistent with the provisions of this section,
 14 the Federal Rules of Civil Procedure shall apply to any peti-
 15 tion under this subsection.

16 “(7) Any documentary material, answers to written in-
 17 terrogatories, or oral testimony provided pursuant to any
 18 demand issued under this section and sections 3729 through
 19 3731 shall be exempt from disclosure under section 552 of
 20 title 5, United States Code.”.

21 (b) The table of sections for chapter 37 of title 31,
 22 United States Code, is amended by adding at the end thereof
 23 the following new items:

“3732. False claims jurisdiction.

“3733. Civil investigative demands.”.

